STATE AGENCIES FOR DEALING WITH LABOR DISPUTES—THE EXPERIENCE OF NEW YORK[1]

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It is to be assumed that we are all practical men seeking a practical solution (perhaps improvement would be better) of the existing relations between employers and employed. Therefore it is well to look over the record of past experiences with a view to pointing out the obstacles encountered and with the hope, and in some degree the expectation, that at least partial remedies may be suggested.

Governmental, provincial and state laws are enacted, construed and executed—I almost said in a spirit of confusion—to say the least, without any active consultation or co-operation between the separate government agencies. For instance, we find twenty-five states having some form of statute law dealing with this subject and charging its execution or enforcement to certain state officers, the provisions of no two statutes being alike. Titles of officers, together with their methods of procedure, compensation, number of executive officers, etc., are so out of harmony or proportion that they might well cause one unfamiliar with our general system of government to wonder whether the several states occupied harmonious or antagonistic governmental relations with each other. The blame or responsibility for this condition rests on no one and nowhere in particular because of the fact that until within the present generation there appeared to be only few occasions when it seemed either wise or necessary that the government should interfere directly with industrial relations between employer and employed.

With the latter-day growth of industrial effort through the consolidation and amalgamation of productive agencies represented by the employing interests as well as the employees' unions and associations, we are face to face with the fact that industry has

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eliminated state lines in every sense of the word so far as development and direction, I think I could say control, are concerned, subject only to certain police powers and taxation for that portion of its plant or capital within certain state lines. The workingman's combination or organization has long been interstate, but really more intrastate or local, in character than most large employers, owing to the generally known fact that especially in matters which might result in an interruption of industry in the form of a strike, the smallest factor, that is, the local organization directly concerned, must exercise original jurisdiction or decision and its course of action be sustained by the national or international body; whereas in the case of an employing corporation which is apparently a state corporation having plants or facilities in other states, the controlling corporate authority can at its pleasure cause the cessation of industry in any of the states where it operates.

Then comes the third estate, the general public, which is made up very largely of employers and employees. This interest is supposed to be the special charge of governmental agencies, and its welfare and protection their first duty. What the public as a whole seems to want at this time is publicity. That is, as I understand it, positive, accurate, public official information. Believing that when this is promptly had public sentiment will compel a reasonable solution, my judgment conforms to this idea, at least to the extent that if the expected relief does not ensue, government will have at hand the necessary information to create and apply such legislative and executive remedies as conditions warrant. No one will fail to grasp the necessity for co-operation and uniformity in both manner and method of carrying out this principle. For instance, in the case of a corporation engaged in telegraph, telephone or express business or the manufacture of steel, iron, paper and many other commodities, the corporation may be a state corporation with its executive offices in one state and its productive departments and energies in several other states. It is possible that a large part of the industry may be interrupted on account of a strike or lockout, and that there may be no interruption in the state where executive authority exists. Under such circumstances at the present time there is no possible legal method of securing accurate information. I doubt whether or not one can be established except through federal authority, although it might be

possible if all state agencies had the authority to investigate now vested in some of the states to conduct a co-operative investigation, *i. e.,* each state investigate that portion of the industry involved which was actually within its own jurisdiction. Here will be seen the necessity for uniform authority and especially uniform methods, together with actual co-operation with the other state governments and the federal government as well. We should also do everything in our power to encourage and secure the assistance and co-operation of any and all civic bodies which are not engaged in open warfare on the principle of industrial collective bargaining as well.

In the first place, there should be written into the public records of our national industrial life definite information, commonly termed statistics, showing the loss of industrial energy caused by strikes and lockouts, together with causes, methods of termination, etc. It may be contended that this is done at present. My answer is, this information is at best collected and computed without any reference to uniformity of system or method as between separate states or subdivisions of government. It is true the federal government undertakes to collect and compile this information at separated intervals, but it is nearly always confronted with the situation that the dispute and very often the direct participants, especially the representatives of the employees, have passed into oblivion before the work is undertaken. I strongly urge the importance and value of uniform methods in both collection and compilation of statistical information on this subject and recommend that a committee be appointed to consider the systems now in vogue with the object of recommending to this conference, or later to the participants therein, methods which will have a uniform basic principle and as nearly as possible similarity of detail.

The logical sequence to this recommendation is also an argument for, in fact demonstrates the necessity for, co-operation between separate state boards and federal departments in the collection of information with reference to disputes interstate in character, as, for instance, the national strike of telegraph operators three years ago, the International Paper Company strike of last year and the hatmakers' strike of the year just closed. I venture the opinion that no bureau or department has or ever will have reasonably correct statistical data on those or similar disputes, mainly

due to two causes—lack of uniform methods and absence of co-operation, as well as dearth of resources. Hence I trust this conference will, so far as possible, encourage and promote the principle and practice of co-operation between the several states and with the federal government.

Practically speaking, we will now assume we have discovered the existence of a strike or lockout. We have provided and are putting in practice a comprehensive system or method of securing and compiling the statistical information. Other states in which a portion of the industry may be located are co-operating with us in this direction. But what about making an effort to terminate or adjust the dispute? Every man who has had practical experience will join in the contention that there is no hard and fast rule to go by, and in the light of experience I cannot refrain from suggesting a comparison which occurs to me, inspired by the remark of an old consulting physician in a case of serious illness. He looked the patient over carefully, asked numerous questions and later said: "Well, the patient is going to recover, but," he said, "do you know, I would give up the business of a consulting physician if I could afford it, because I am scarcely ever called in until there is no help for the patient and when death ensues, I head the list of physicians in attendance." So with the public official; he is not wanted, often not tolerated until one of the parties to a dispute is at the end of his other resources, then said party demands that the public agency interfere, but the other party says the dispute is dead. That is human nature, I might say human selfishness—possibly human suspicion—and after all, we might present the same attitude in the other fellow's place.

Consequently the public official who seeks to intervene in labor disputes with the limited authority at present vested in such officials must conduct a continuous campaign of demonstration to his constituency, embodying the positive propositions of ability, courage and integrity; ability standing for actual and practical knowledge on the general subject of industrial disputes and courage to demonstrate that fact, prepared after reasonable inquiry to make some positive recommendation or suggestion to meet or overcome the questions in dispute and, if necessary, to take the responsibility for criticising the position, attitude or contentions of either or all parties to the controversy. It goes without saying that no one

who has the appearance of prejudice or bias, or whose personal or official integrity is even doubtful, can engage successfully in work of this character. Summed up, there is no place in an industrial dispute which has assumed the form of a strike or lockout for a public official who has neither the ability to recommend some reasonable method of solving the problem presented nor the courage to present it.

This brings us to the stage where mediation and conciliation have failed, and what then? It seems to me that depends on the character and importance of the industry. If it be of a public or quasi-public service character, necessary to the welfare, comfort or convenience of the general public, there should be forthwith a thorough public investigation conducted by the state or governmental body having jurisdiction in the premises. And, by the way, state and national statutes should be created or strengthened so that either the federal or state government should have jurisdiction in every such situation. I am firm in the belief that if it were a generally accepted fact that a full and thorough official investigation of every important strike and lockout would be promptly made and a formal finding and public official recommendation ensue, a very material reduction in the volume of such disputes would be effected.

But, my friends, *here is the rub.* It takes time and money to conduct investigations. As a matter of fact, it takes time and money and tact and patience and oftentimes self-restraint to do almost any of the things indicated in the mystic words, "conciliation, mediation and arbitration." Have we said, or can we say, that, given so many more dollars, we will return it manifold to the state through minimizing interruptions to industrial energy? Whether or not such statements would be credited is another matter. In any event, it is a foregone conclusion that a percentage of our people would immediately raise the question of governmental interference with individual or property rights, which could well provoke the retort that labor disputes are about, if not quite, the only phase of human existence or endeavor in which government does not now interfere and, I might add, while I am at this time opposed to compulsory arbitration, industrial disputes are about the only form of human contention in which government does not arbitrarily compel adjustment.

Then we always have with us the individual who insists on preserving the autonomy and authority of the state. I would have no objection to his contention if the factors composing our industrial life were confined to state limits or jurisdiction. We all realize this to be not only an impossible proposition, but an undesirable one as well. We are in an age of combination, the doing of things collectively, especially as applied to industry, and it stands to reason if there is to be any effective supervision or regulation it must be collective or at least co-operative in character. As a matter of fact, in nearly all large avenues of employment, especially those that are public or semi-public service in character, the individual employer has given way to the corporation, which is a creature of government. I can see no good reason why, when through the medium of a labor dispute an industry controlled by a corporation is suspended or seriously impaired in operation, the stockholders, to say nothing of the public, are not entitled to know the cause thereof. It would also seem that this knowledge would be of great importance to the legislative branches of government in order that if legislation were advisable or necessary it might be based on reliable information.

Turning to the federal department of labor and federal legislation on this general subject, I believe no one at all familiar with the recent industrial history, especially the two critical situations on the railroads, first the so-called Western Association dispute three years ago and a year later the dispute on the railroads in the South, will other than thank Providence and the United States Congress that we had such a statute as the Erdman Conciliation Act, and it might well be said, such capable men as Commissioner of Labor Neill and Chairman of the Interstate Commerce Commission Knapp, to administer it. Inasmuch as this is practically all of the executive authority the federal government has thus far enacted into law on this subject, it would perhaps be well to consider whether or not it is adequate to meet conditions which may at any time arise. Personally, I am of the opinion that it is not. As a matter of fact, a situation familiar to several of those present appears to have existed on the Great Lakes during the entire season of navigation for 1909 which was investigated so far as possible by the combined boards of arbitration of several of the great states of the Union, which according to a statement signed by them con-

tained many grave contentions, and apparently involved nearly 8,000 workpeople as well as a loss to industry which cannot be measured or computed. No single state had either sufficient jurisdiction or equipment to make proper inquiry. Although I am merely stating a fact in asserting that all the representatives in the joint conciliation board were of the opinion that a full inquiry should be made, I believe the federal law should be so amended as to include all interstate commerce industrial disputes within the jurisdiction of conciliation and investigation.

Another point I desire to make, in justice to, rather than in criticism of, the present federal officials charged with its execution. It seems to me that both the federal commissioner of labor and the chairman of the Interstate Commerce Commission are so thoroughly and completely engrossed with other important and often imperative administrative duties that they, not the present individuals but the officials referred to, should be relieved of the administration of this law, and other agencies provided. I also believe the principle of permissive or positive right of official investigation should be incorporated into the law and that the present avenue for appeal by either party should be retained as well. This would eliminate the possible contention as to the right or jurisdiction of government to intervene, without taking away any relief now afforded to the contestants and, which is perhaps of more importance, permit the governmental agency to determine when intervention or investigation was advisable or necessary without waiting for request from either party.

Another, and, in so far as it can have practical application, perhaps the most important phase of the whole subject, is prevention of strikes and lockouts. At times this looks to be an impossible proposition, but when we stop to think of the many ramifications of human existence which in the past were admittedly or at least negatively impossible of correction which time and education have solved, we are encouraged to renewed effort, firm in the belief that human character is being continually elevated and purified and that our constantly enlarging and improving educational facilities must and will aid materially in the substitution of right for might, reason for force and conciliation coupled with arbitration for strikes and lockouts. Summed up in that potent phrase,

"Let us reason together." We said in substance in our 1901 report to the New York State Legislature:

> A somewhat new development is being manifested in our industrial life by the creation and organization of associations of employers. . . . If the dual organizations of employers and employees realize and recognize their interest in and dependence on each other and each within its proper sphere gives consideration to the claims and contentions of the other, good rather than evil must result. . . . It goes without saying that practically all employers in a given locality engaged in the same general avenue of industry are natural competitors and in a position to grant practically the same terms and conditions of employment, which must have the effect of eliminating the labor cost as a factor in competition. Therefore agencies through which uniform terms and conditions of employment can be established in competitive industry are more just and feasible than the enactment of separate bargains by separate employers and individual employees or separate groups of employees. We know of no vehicle through which this can be accomplished except that of the trade agreement.

I can see no reason to vary one iota from the text as then written on the subject of providing the most reasonable expedient now at hand for a clear and comprehensive understanding between the organized forces of capital and labor. It is nevertheless a fact that many strikes have occurred as a result of the single contention "whether or not an existing trade agreement should be renewed." We have met this situation by urging parties to such agreements to inaugurate a specific provision in all new agreements and old ones renewed providing that "This agreement shall be in full force and effect from ..... (date) to ..... (date) and thereafter until either of the parties shall have given the other ..... (number) days' notice in writing of their intention to terminate the same, and that nothing contained herein shall be construed to prevent either party from proposing any amendment to take effect at any time after the original period designated." The effect is to provide a continuous agreement which can easily be terminated and at the same time give ample opportunity for discussion and amendment. Our experience justifies the contention that this provision is assisting materially in preventing strikes and should be generally recommended.

The policy of the New York State Bureau of Arbitration in dealing with this subject is so clear that he who runs may read. We enter into no defense of our position or policy, neither do we

apologize for anything connected with our treatment of this subject except our own personal limitations. Since the establishment of the present bureau in 1901, all of the energy and effort at our command have been directed toward seeking to conserve honorable industrial peace between employer and employed. At no time during that period have we been able to see how this could be generally accomplished except through the medium of mutual understandings between the employers and employed. The only sane method of which we are yet aware is what is usually termed mutual bargaining or trade agreements, coupled with provisions for local or other arbitration of questions which cannot be mutually decided or that arise outside of such agreements. We have proceeded on the theory that as a general proposition the most lasting and satisfactory industrial peace can be secured through agreements made by the parties at first interest and we have stood ready to furnish such data, advice or information as we were possessed of to either or both parties. On the other hand, where there has been a continued interruption of industry causing not only loss and inconvenience to the parties directly involved but to the general public as well, we have not hesitated to place the responsibility where it appeared to us to rightly lie and in the case of serious interruption of public utilities or practical public service corporations to go so far as to suggest the possible necessity of compulsory settlement. Public officials or others engaged in an honest effort to promote industrial peace along the foregoing lines need not expect either consideration, support or sympathy from those who believe in the right of might.

We see men who appear to be fair-minded and intelligent on most subjects insisting on the right of their interests to consolidate and amalgamate and absolutely denying such right to the other fellow; men decrying paternalism and contending for the absolute right to dictate the conditions under which other men shall earn their living. We prefer to look at the whole subject of our industrial life from the viewpoint that its development has been so wonderfully vast and rapid that many of its important ramifications have been at least partially neglected, the bad effects of which are becoming more patent and for which remedies must and will be provided. Organization is here, both of capital and labor, and here to stay. There are, no doubt, many phases of organization,

corporate and otherwise, capital and labor, that are harmful and even wrong. Let us seek to cure the evil instead of undertaking to kill the principle.

It seems a pretty good proposition to subscribe to that government is greater than any of its creations whether they be citizen or corporation, and, it might as well be said, greater and more important than any of its sub-divisions; and I believe that government will eventually find a way to dispose of this question in such a manner as to operate for the general good, even if it is necessary to interfere with some of the so-called existing rights of individual citizens, corporations, organizations or even sub-divisions of government.